

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DOCINA RENE ESPINO,)
) CASE NO. C12-0967-RSL-MAT
Plaintiff,)
)
v.)
) REPORT AND RECOMMENDATION
MICHAEL ASTRUE,)
Commissioner of Social Security,)
)
Defendant.)
_____)

This Social Security matter was previously remanded pursuant to sentence six of 42 U.S.C. § 405(g) because the recording of the hearing held on March 15, 2011 could not be located. (Dkts. 14 and 15.) The Court further, in the January 23, 2013 Order of Remand, ordered the Commissioner and Appeals Council to expedite the case and imposed various time limits. (Dkt. 15 (allowing sixty days for the continued search for the missing recording and to file an answer in this Court and, if the recording could not be located within that same sixty-day period, requiring remand for a *de novo* hearing to be held within 120 days of the date of the Appeals Council’s remand order).)

01 The Commissioner now moves for reversal and remand pursuant to sentence four of 42
02 U.S.C. § 405(g) for further administrative proceedings before an Administrative Law Judge
03 (ALJ), a *de novo* hearing, and a new decision in regard to plaintiff's application for Disability
04 Insurance Benefits (DIB) under Title II of the Social Security Act. (Dkt. 18.) Plaintiff has no
05 objection to the request for the remand, or the language of the proposed remand order, but asks
06 that the Court again include a time limit for compliance with the order. (Dkt. 19.) She notes
07 that the Commissioner failed to comply with the time limits set forth in the prior Order, and
08 expresses frustration with the delay in the adjudication of her claim given that she filed her
09 application for DIB over eight years ago, in November of 2005. Plaintiff, therefore, asks that
10 the Court require, in the new remand order, that a new hearing be held within 120 days of the
11 date that judgment is entered in this matter.

12 Based on the agreement of the parties, the Court recommends this case be REVERSED
13 and REMANDED for further administrative proceedings pursuant to sentence four of 42
14 U.S.C. § 405(g). On remand, the ALJ will further develop the record by reassessing the
15 findings of Dr. Kelly as treatment records and not as opinion evidence; reevaluating the
16 evidence from the claimant's chiropractors while keeping in mind that he is required to consider
17 all relevant evidence in the case record, even findings from non-acceptable medical sources;
18 and completing the rest of the sequential evaluation process based on the above findings.
19 Also, this case will be assigned to a different ALJ, and the ALJ will hold a *de novo* hearing and
20 issue a new decision. As requested by plaintiff, the Commissioner shall hold a new hearing for
21 plaintiff within **120 days** of the date that judgment is entered in this matter. Finally, upon
22 proper application, the Court will consider plaintiff's application for attorneys' fees under the

01 Equal Access to Justice Act, 24 U.S.C. § 2412, *et seq.*

02 The Court recommends that Chief United States District Judge Robert S. Lasnik
03 immediately approve this Report and Recommendation and order the case REVERSED and
04 REMANDED for further administrative proceedings pursuant to sentence four of 42 U.S.C. §
05 405(g). A proposed order accompanies this Report and Recommendation.

06 DATED this 18th day of February, 2014.

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09 Mary Alice Theiler
10 Chief United States Magistrate Judge
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